

Appl. No. : 09/807,731
Filed : April 16, 2001

REMARKS

Claim 1 has been amended. As a result, Claims 1-7, 10-13, and 16-22 remain pending in the present application. Support for the amendments and new claims is found in the specification and claims as filed. Accordingly, the amendments do not constitute the addition of new matter. Reconsideration of the application in view of the foregoing amendments and following comments is respectfully requested.

Rejection under 35 U.S.C. § 103

The Examiner rejected Claims 1-7 and 16-22 under 35 U.S.C. § 103(a) as being unpatentable over Toshio et al., Takaaki et al., Kunihio, or Lewis et al. and Greff, and further in view of Asako et al. and Yoshio et al.

The claims have been amended to recite a pH range of about 3.0 to about 3.7. None of the cited references disclose this pH range. Moreover, as explained below, even if these references established a *prima facie* showing of obviousness, the significant unexpected results obtained using the presently claimed invention would rebut such a showing.

As amended, Claim 1 recites “A vegetable juice comprising an unheated green vegetable puree which does not have catalase activity, comprising at least one acid and having a pH of about 3 to about 3.7.” Support for the amendment to Claim 1 can be found on page 7, line 22 to page 8, line 1 which states that “[t]he puree of the present invention contains an acid or acids and has a pH of about 4.1 or less, more preferably 3.7 or less. For maintaining the flavor and taste of vegetables, the lower limit is pH about 2.7, preferably about pH 3.”

According to M.P.E.P. 716.02(a), evidence of unobvious or unexpected advantageous properties, such as superiority in a property the claimed compound shares with the prior art, can rebut *prima facie* obviousness.

Without conceding to a case of *prima facie* obviousness, Applicants present data that show evidence of unobvious or unexpected advantageous properties of the claimed invention in a Declaration under 37 C.F.R. § 1.132. The data presented in the Declaration shows the flavor and taste scores of a green vegetable, such as cabbage, are consistently superior above pH 2.90. As shown in the table in the Declaration, the taste scores for all of the products having a pH within the claimed range of about 3.0 to about 3.7 are 8 or above. In contrast, the taste scores for all of the products having a pH below the claimed range are lower. Additional data is shown in Table

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1 of the specification on page 23. Consistent with the data in the Declaration, all of the taste scores for products within the claimed pH range are 8 or above. Moreover, this table shows that products having a pH above the claimed range all receive a lower taste score.

Nothing in the prior art would lead one of ordinary skill in the art to expect the high taste scores seen within the relatively narrow range recited in the presently pending claims. Thus, the results evidence a significant unexpected property of the claimed invention.

Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 103(a).

Allowed Claims

The Examiner indicated that Claims 10-13 are allowed, and such indication is gratefully acknowledged.

CONCLUSION

In view of the foregoing amendments and comments, it is respectfully submitted that the present application is fully in condition for allowance, and such action is earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is invited to call the undersigned in order to resolve such issue promptly.

Respectfully submitted,

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